IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.8.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.497 of 2007

Rajeswari .... Petitioner

Vs.

1. The District Collector and
District Magistrate
Villupuram District
Villupuram.

2. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai - 9. .... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein

For Petitioner : Mr.C.Johnson
For Respondents : Mr.Paul Noble Devakumar
Govt. Advocate (Criminal Side)

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The first respondent herein clamped an order of detention as against Ravi alias Mandavai Ravi alias Ravichandran, son of Kannaiyan, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention came to be passed by the first respondent on the basis of the ground case said to have taken place on 15.2.2007 within the jurisdiction of the Inspector of Police, Marakanam Police Station. The detenu was found to be in possession of three mud pots, in which two mud pots contained 35 litres each and one mud pot contained 33 Litres, totalling 103 Litres of poisonous arrack, and was selling the same. A case was registered in Markanam Police Station in Crime No.56 of

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2007 under Sections 4(1-A), 4(1)(aaa), 4(1)(i) of the Tamil Nadu Prohibition Act. On chemical analysis of the arrack seized, it was disclosed that the same contained 3.76, 3.76, 3.76 mg% W/V of Atropine respectively, which is a poisonous substance, which, in the opinion of the medical officer, would develop giddiness, vomiting, congestion of eye lids and respiratory failure, and if not treated vigorously would result in death due to Atropine poison. The order of detention is also supported with four adverse cases against the detenu bearing Crime Nos.5/2006, 104/2006 and 438 of 2006 on the file of the Tindivanam Prohibition and Excise Wing, and a Crime No.55/2006 pending on the file of Markanam Police Station for the offences punishable under the Tamil Nadu Prohibition Act.

3. Challenging the said detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu Ravi alias Mandavai Ravi alias Ravindran, son of Kanniyan, who is detained under Tamil Nadu Act 14 of 1982 by the first respondent in his proceedings C2/10057/2007, dated 8.3.2007 now confined in the Central Prison, Cuddalore and to quash the detention order and to him at liberty.

4. Heard Mr.C.Johnson, learned counsel for the petitioner and Mr.Paul Noble Devakumar, learned Government Advocate appearing for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation dated 19.4.2007 and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

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6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 8.3.2007. A representation was made to the detaining authority on 19.4.2007. The detaining authority received the same on 24.4.2007 and remarks were called for on 26.4.2007. The representation was received from the Government Central Prison on 30.4.2007 and parawar remarks were called for from the Sponsoring Authority on 2.5.2007, but the remarked of the Sponsoring Authority were received only on 18.5.2007. The delay in receiving the remarks by the Sponsoring Authority, viz., between 2.5.2007 to 18.5.2007, viz., a period of sixteen days, was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the delay in submitting the remarks by the Sponsoring Authority. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for twelve days (excluding two Saturdays and two Sundays), between 2.5.2007 and 18.5.2007. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived

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of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

The towering delay of twelve days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 8.3.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The District Collector and
   District Magistrate
   Villupuram District
   Villupuram.
2. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.
3. The Superintendent, Central Prison,
   Cuddalore.
4. The Joint Secretary to Government
   Public (Law & Order) Fort, st.George,
   Chennai.9.
5. The Public Prosecutor
   High Court, Madras.

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